This document is scheduled to be published in the
Federal Register on 11/15/2012 and available online at
http://federalregister.gov/a/2012-27712, and on FDsys.gov

8011-01p
SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-68179; File No. SR-NYSEARCA-2012-121)

November 8, 2012

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the NYSE Arca Options Fee Schedule Relating to Pricing Applicable to Electronic Transactions in Non-Penny Pilot Issues

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b-4 thereunder,[3] notice is hereby given that, on October 25, 2012, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE Arca Options Fee Schedule ("Fee Schedule") to restructure the pricing applicable to electronic transactions in non-Penny Pilot issues. The text of the proposed rule change is available on the Exchange's website at www.nyse.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

---

1 15 U.S.C.78s(b)(1).

2 15 U.S.C. 78a.

3 17 CFR 240.19b-4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to restructure the pricing applicable to electronic transactions in non-Penny Pilot issues.[4] The Exchange proposes to make the fee change operative on November 1, 2012.

Currently, all transactions in non-Penny Pilot issues are considered "standard executions," as opposed to the "Post-Take" pricing structure that currently applies only to electronic executions in Penny Pilot issues.[5] The Exchange now proposes to apply the Post-Take pricing structure to electronic executions in non-Penny Pilot issues. As a

---

4 As provided under NYSE Arca Options Rule 6.72, options on certain issues have been approved to trade with a minimum price variation of $0.01 as part of a pilot program that is currently scheduled to expire on December 31, 2012. The proposed change will not have an impact on pricing applicable to manual transactions in non-Penny Pilot issues, except that, as proposed, Marketing Charges would no longer apply. However, the Exchange does propose to amend the Fee Schedule to reflect that Firm, Broker Dealer and Customer electronic executions would become "N/A" with respect to standard executions.

5 Manual transactions in Penny Pilot issues are considered standard executions and billed as such.

result, electronic transactions in non-Penny Pilot issues would be subject to Post-Take credits and fees, as is currently applicable for Penny Pilot issues. Under this structure, an electronic order or quote is charged a fee upon execution if it executes against a resting order or quote in the Consolidated Book (i.e., taking liquidity), or, alternatively, a resting electronic order or quote in the Consolidated Book (i.e., posted liquidity) generally receives a liquidity credit when an incoming order or quote executes against it.[6]

To remain competitive, the Exchange is adopting Post-Take pricing for electronic transactions in all non-Penny Pilot issues, but the rates would be different than those that currently apply to Penny Pilot issues. To encourage greater Customer participation, the proposed new rates would provide a higher rebate to Customers that post liquidity, as compared to other market participants, and a rate for Customer orders that take liquidity that is comparable to other market participants. The proposed rates for Lead Market Makers ("LMMs") and Market Makers for taking liquidity would be similar to each other, although not identical because of differing levels of obligations. The proposed rates also provide for higher rebates for posting liquidity for Market Makers, in order to offset the higher fees for taking liquidity. Firm and Broker Dealer electronic orders that are posted in the Consolidated Book will continue to be charged an execution fee, which would be the same as the current fee, despite such transactions posting liquidity.

---

6 As described below, a Firm or Broker Dealer electronic transaction in a non-Penny Pilot issue would be charged a fee, even if it is posting liquidity.

The proposed new fees would be as follows:

	Electronic Executions in Non Penny Pilot Issues	
	Post Liquidity	Take Liquidity
Customer Electronic	-$0.75	$0.79
LMM	-$0.40	$0.78
NYSE Arca Market Maker	-$0.30	$0.80
Firm and Broker Dealer Electronic	$0.50	$0.85

As with the Penny Pilot issues, there would be no charges for executions in non-Penny Pilot issues on the opening auction. Also, orders originating from the Trading Floor that execute against the Consolidated Book so as to complete a manual transaction would continue to be charged manual order fees, as is currently the case for Penny Pilot issues, for which standard execution fees apply.[7]

In addition, the Exchange proposes to eliminate Marketing Charges on the Exchange.[8] Marketing Charges do not currently apply to transactions in Penny Pilot issues and, related to the proposal to apply Post-Take pricing to non-Penny Pilot issues, the Exchange has decided to eliminate Marketing Charges entirely.

The Exchange also proposes conforming changes to the endnotes in the Fee Schedule to account for the application of Post-Take pricing for non-Penny Pilot issues.

---

7 See endnote 5 in the Fee Schedule.

8 A Marketing Charge of $0.65 currently applies to LMM and Market Maker transactions against Customers.

Specifically, the Exchange proposes to amend endnote 5 to specify that only manual executions would be considered "standard executions" (i.e., they would not be subject to Post-Take pricing). The Exchange also proposes to amend endnote 6 to specify that, as is currently the case for Penny Pilot issues, transaction fees do not apply to executions occurring during the Opening Auction, as described above. The Exchange also proposes to amend endnote 6 to address the proposal that Firms and Broker Dealers be charged a fee for posting liquidity in non-Penny Pilot issues.

The Exchange notes that the proposed fees are similar to those recently adopted by the NASDAQ Stock Market LLC ("NASDAQ") for transactions on the NASDAQ Options Market ("NOM") in non-Penny Pilot Options.[9] Additionally, the proposed fees and credits for non-Penny Pilot issues are similar to fees and rebates currently in place at BATS Exchange, Inc. ("BATS") Options ("BATS Options").[10]

The Exchange notes that the proposed changes are not otherwise intended to address any other issues surrounding fees for non-Penny Pilot issues and the Exchange is not aware of any problems that OTP Holders and OTP Firms would have in complying with the proposed change.

The Exchange proposes to make the fee change operative on November 1, 2012.

---

9 See Exchange Act Release No. 68029 (October 10, 2012), 77 FR 63384 (October 16, 2012) (SR-NASDAQ-2012-114).

10 BATS assesses a Non-Penny Pilot Option Fee of $0.80 [sic] per contract for accessing liquidity for a Professional, Firm or Market Maker order that removes liquidity from the BATS Options order book and a $0.75 per contract rebate for a Customer order that removes liquidity from the BATS Options order book. Additionally, BATS pays a $0.70 per contract rebate for a Professional, Firm or Market Maker order that adds liquidity to the BATS Options order book and a $0.75 rebate per contract for a Customer order that adds liquidity to the BATS Options order book.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the "Act"),[11] in general, and furthers the objectives of Section 6(b)(4) of the Act,[12] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange operates in a highly competitive market, comprised of 10 U.S. options exchanges, in which sophisticated and knowledgeable market participants can and do send order flow to competing exchanges if they deem fee levels at a particular exchange to be excessive or the rebate offered to be inadequate. The Exchange believes that the proposed fee and rebate structure is competitive and similar to other fees and rebates in place on other exchanges.[13] The Exchange believes that this competitive marketplace materially impacts the fees and rebates present on the Exchange today and substantially influences the proposal set forth herein. The Exchange believes that it is equitable and not unfairly discriminatory to apply the proposed non-Penny Pilot issue pricing to the various market participants, as noted in this proposal. In this regard, all market participants transacting in non-Penny Pilot issues would be subject to the fees and rebates proposed herein.

The Exchange believes that the proposed Customer credit to post liquidity in non-

---

11 15 U.S.C. 78f(b).

12 15 U.S.C. 78f(b)(4).

13 See supra notes 9 and 10.

Penny Pilot issues is reasonable because it would continue to incent OTP Holders and OTP Firms to transact Customer order flow on the Exchange. In this regard, Customer order flow benefits all market participants through the increased liquidity that it brings to the market. Customers would be subject to a $0.79 per contract fee to remove liquidity in non-Penny Pilot issues, as compared to no fee today, which the Exchange believes is reasonable due to the opportunity to receive the proposed credit. The Exchange believes that its proposal to offer a Customer credit to post liquidity in non-Penny Pilot issues (from no credit today, to $0.75 per contract as proposed) is reasonable because other market participants will benefit from the increased order flow to the Exchange.

The Exchange believes that charging a fee for Firm and Broker Dealer executions that post liquidity and increasing the fee for their executions that take liquidity in non-Penny Pilot issues is reasonable because the fees would enable the Exchange to incentivize Customers to post greater amounts of liquidity in non-Penny Pilot issues. The Exchange believes that its success at attracting Customer order flow benefits all market participants by improving the quality of order interaction and executions at the Exchange, including for Firms and Broker Dealers.

The Exchange believes that it is equitable and not unfairly discriminatory to assess Firms and Broker Dealers a fee for posting liquidity in non-Penny Pilot issues, but to provide a credit to other market participants for posting liquidity in non-Penny Pilot issues. The Exchange notes that Firms and Broker Dealers would be assessed the same $0.50 per contract fee that they are currently assessed for posting liquidity in non-Penny Pilot issues. More specifically, the Exchange believes that not assessing a Customer, LMM or NYSE Arca Market Maker a fee for posting liquidity in non-Penny Pilot issues, as compared to Firms and Broker Dealers, is equitable and not unfairly discriminatory because Customers, LMMs, and NYSE Arca Market Makers differ from Firms and Broker Dealers. In this regard, the Exchange believes that Customer order flow benefits all market participants by improving liquidity and the quality of order interaction. Additionally, LMMs and Market Makers have obligations to the market and regulatory requirements,[14] which normally do not apply to other market participants. For example, an LMM has the obligation to make continuous markets 90% of the time that the Exchange is open for trading, while other Market Makers have the obligation to make continuous markets 60% of the time that the Exchange is open for trading. Both LMMs and other Market Makers must also engage in a course of dealing that is consistent with the maintenance of a fair and orderly market. Accordingly, the Exchange believes that it is equitable and not unfairly discriminatory to charge Firms and Broker Dealers for posting liquidity but to not charge other market participants for doing so.

The proposed differentiation between pricing for Customers, LMMs, NYSE Arca Market Makers and other market participants is also equitable and not unfairly discriminatory because it reflects the differing contributions made to the liquidity and trading environment on the Exchange by Customers, LMMs, and NYSE Arca Market Makers, as well as the differing mix of orders entered. The Exchange believes that increasing the Firm and Broker Dealer fees for taking liquidity in non-Penny Pilot issues to $0.85 per contract is equitable and not unfairly discriminatory because Firms and Broker Dealers will be assessed the same fee. Further, the amount of the fee is

---

14 See NYSE Arca Rules 6.32 (Market Maker Defined), 6.37 (Obligations of Market Makers), 6.37A (Obligations of Market Makers – OX) and 6.37B (Market Maker Quotations – OX).

reasonable because it is the same as the rate charged to Firms and Broker Dealers on other exchanges. For example, NOM charges Professionals, Non-NOM Market Makers and Firms $0.85 per contract to take liquidity in non-Penny Pilot issues. Customers, LMMs and Market Makers would be assessed a lower fee for taking liquidity in non-Penny Pilot issues, as compared to Firms and Broker Dealers, because, as mentioned above, the fees reflect the differing contributions made to the liquidity and trading environment on the Exchange by Customers, LMMs, and Market Makers, as well as the differing mix of orders.

The Exchange believes that the rates proposed for LMMs and Market Makers are equitable and not unfairly discriminatory. In this regard, non-Penny Pilot issues are typically less liquid than Penny Pilot issues and thus the heightened quoting obligation of the LMM in these issues requires a differentiated posting incentive as compared to Penny Pilot issues. Accordingly, since there is much greater risk for a liquidity provider when posting versus taking in less liquid names and the LMM's quoting obligation is 50% higher than a regular Market Maker, they require a meaningfully higher posting rebate. Taking liquidity is not as much of the core function of the liquidity provider, thus the difference in take rates do not have to be as substantial, which the Exchange believes is reasonable.

The Exchange also believes that, overall, the proposed fees for taking liquidity are reasonable because in the current U.S. options market, many of the contracts are quoted in pennies. Under this pricing structure, the minimum penny tick increment equates to a $1.00 economic value difference per contract, given that a single standardized U.S. option contract covers 100 shares of the underlying stock.

For contracts that are quoted in $0.05 increments (non-pennies), the value per tick is $5.00 in proceeds to the investor transacting in these contracts. Liquidity rebate and access fee structures on the make-take exchanges, including the Exchange's Post-Take pricing structure, for securities quoted in penny increments are commonly in the $0.30 to $0.45 per contract range. A $0.30 per contract rebate in a penny quoted security is a rebate equivalent to 30% of the value of the minimum tick. A $0.45 per contract fee in a penny quoted security is a charge equivalent to 45% of the value of that minimum tick. In other words, in penny quoted securities, where the price is improved by one tick with an access fee of $0.45 per contract, an investor paying to access that quote is still $0.55 better off than trading at the wider spread, even without the access fee ($1.00 of price improvement less a $0.45 access fee equals $0.55 better economics). This computation is equally true for securities quoted in wider increments. Rebates and access fees near the $0.85 per contract level equate to only 17% of the value of the minimum tick in non-Penny Pilot issues, less than the experience today in Penny Pilot issues. For example, a retail investor transacting a single contract in a non-penny quoted security quoted a single tick tighter than the rest of the market, and paying an access fee of $0.79 per contract, is receiving an economic benefit of $4.21 ($0.05 improved tick equals $5.00 in proceeds less $0.79 access fee, which equals $4.21). The Exchange believes that encouraging LMMs and Market Makers to quote more aggressively by giving credits to post liquidity and incenting Customer orders to post on NYSE Arca will narrow the spread in non-Penny Pilot issues to the benefit of investors and all market participants by improving the overall economics of the resulting transactions that occur on the Exchange, even if the access fee paid in connection with such transactions is higher. Accordingly, the

Exchange believes that the proposed fees and rebates for the non-Penny Pilot issues are reasonable, equitable and not unfairly discriminatory.

As with Penny Pilot issues, there will be no fees for transactions on the Opening Auction. The Exchange believes that this is equitable and not unfairly discriminatory because it would apply to trading interest from all market participants, and is reasonable because a determination of posting liquidity or taking liquidity is difficult prior to the establishment of the opening market.

The Exchange believes the application of manual fees to orders represented by a Floor Broker and partially executed against the Consolidated Book are reasonable, equitable and not unfairly discriminatory, because the fees are those expected by the market participant that submits the order, and does not alter the fees or credits expected by the market participant whose order or quote is resting in the Consolidated Book.

The Exchange believes that eliminating Marketing Charges on the Exchange is reasonable because it would eliminate a fee for Market Makers and LMMs that the Exchange has decided to no longer apply in light of the proposed application of Post-Take pricing to non-Penny Pilot issues – currently, Marketing Charges do not apply to Penny Pilot issues. This is equitable and not unfairly discriminatory because the charges are currently collected only from LMMs and Market Makers who interact with Customer orders, and, as a result of the proposed change, would no longer be collected from any participant on the Exchange. As a result, Customers would receive direct credit for posted liquidity, rather than a payment for order flow in an indirect manner.

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange received one unsolicited, written comment on the proposed rule change from an LMM on the Exchange. The LMM commented that the proposed pricing structure would negatively impact its business because it trades less liquid issues with wider markets, and that the restructuring of the fees will not provide a sufficient incentive to him to provide tighter markets to receive credits for posting liquidity. The LMM also stated that the proposed pricing structure will encourage order flow providers to send mid-market trades (orders between the bid and offer) to the Exchange to collect payment (posted liquidity credits) and gain priority, and then direct market-taking orders to other exchanges where the order flow provider would not be charged a market taker fee.

Additionally, the LMM believed that the proposed pricing structure would encourage competition from Customers who would have an incentive to improve on the LMM's markets to collect posted liquidity credits and also gain priority, diminishing the value of being an OTP-holding market maker on the Exchange. Lastly, the LMM commented that there might or might not be an increase in order flow between the bid and offer, but that other, more sophisticated firms would be more competitive, and, therefore, the LMM would not see the benefits of the proposed pricing structure.

In response to the LMM's statements, the Exchange believes, as described above, that the proposed fee and rebate structure is competitive and similar to other fees and rebates in place on other exchanges. The LMM's complaints are that he will not be able to compete against Customers or more sophisticated firms. The Exchange believes that attracting Customer order flow benefits all market participants by improving the quality of order interaction and executions at the Exchange, including for Firms and Broker Dealers. Encouraging LMMs and Market Makers to quote more aggressively by giving credits to post liquidity and incenting Customer orders to post on NYSE Arca will narrow the spread in non-Penny Pilot issues to the benefit of investors and all market participants by improving the overall economics of the resulting transactions that occur on the Exchange, and by increasing competition between the LMM and Customers and competing Market Makers, spreads will narrow and more attractive order flow will be available on the Exchange, enhancing the markets for all participants.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[15] of the Act and subparagraph (f)(2) of Rule 19b-4[16] thereunder, because it establishes a due, fee, or other charge imposed by the NYSE Arca.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the

---

15 15 U.S.C. 78s(b)(3)(A).

16 17 CFR 240.19b-4(f)(2).

Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (http://www.sec.gov/rules/sro.shtml); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSEARCA-2012-121 on the subject line.

Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEARCA-2012-121. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (http://www.sec.gov/rules/sro.shtml). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, D.C. 20549-1090, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the NYSE's principal office and on its Internet website at www.nyse.com. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEARCA-2012-121, and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Kevin M. O'Neill
Deputy Secretary

[FR Doc. 2012-27712 Filed 11/14/2012 at 8:45 am; Publication Date: 11/15/2012]

[17] 17 CFR 200.30-3(a)(12).